a true property right.[21] It is therefore submitted that this restriction attached to the benefit of the public user in the streets, and that the London County Council in charge of such public interests was the proper body to enforce it.[22]

The court failed to recognize this, and Scrutton, J., regretting the result to which he felt himself forced, suggests that the present rule is over narrow, and that it would be of advantage to go back to the old doctrine of unjust enrichment, which is, as we have seen, no test at all. This result is unnecessary if the courts are sufficiently liberal in their test of a dominant estate. In this way a more workable standard is obtained and one by which equity may properly carry out Lord Cottenham's attempt to add to the narrow limits of easements at law.

RECENT CASES

ADMIRALTY — JURISDICTION — AEROPLANE FALLEN IN NAVIGABLE WATERS. — An aeroplane fell in navigable waters of Puget Sound. A libel was brought in admiralty to enforce a lien for repairs. *Held*, that the court had no jurisdiction. *The Crawford Bros., No. 2*, 215 Fed. 269. (Dist. Ct., W. D. Wash.)

For a comment on this extraordinary attempt at the extension of admiralty jurisdiction, see NOTES, p. 200.

BANKRUPCTY — PREFERENCES — INTENT OF DEBTOR: IMPORTANCE OF MOTIVE. — A debtor sent his creditor a check in the ordinary course of business. The creditor failed to cash the check and five days later learned of the debtor's insolvency. Not having the original check with him, the creditor then obtained from the debtor a duplicate check, which he cashed. Both parties at this time had full knowledge of the insolvency. *Held*, that this transaction is not a voidable preference under the Irish Bankruptcy Act. *In re Oliver*, [1914] 2 Ir. K. B. 356 (C. A.).

The narrow construction given the words "with a view of giving a preference" in the English bankruptcy law has confined the English law in regard to preferences within narrow limits. For a transfer made by a debtor with knowledge that it will prefer a creditor is not deemed a preference unless that was the debtor's dominant motive. *In re Eaton*, [1897] 2 Q. B. 16. Accordingly, if the debtor's motive is to perform a supposed legal duty, or if the payment is made because of pressure from a creditor, the transfer is not regarded as pref-

[21] GALE, EASEMENTS, p. 15, doubts whether the right of user of the people in a street is an easement because there is no dominant tenement.

[22] Coverdale *v.* Charlton, 4 Q. B. D. 104, shows the ordinary operation of this rule. The court denies that the Council in the principal case has any estate or interest in the land (p. 653), citing §§ 7 and 9 of the London Building Act, 1894; but the statute referred to says nothing on that question, merely detailing the method by which the Council might accept the dedication of new streets to the public's use. STAT. 51–52 VICT., ch. 41, pt. 2, § 4, gives certain powers to the County Council, to the sewer inspector, and to the borough councils as to the repair and management of the London streets. It is not entirely clear from these acts by which body the property interest of the people is held, but it would seem from a reading of the provisions that the County Council was in control. Even if the County Council were vested with only part of this interest, it would seem that the court should have recognized this part interest as sufficient to give the Council power to act.

erential. *In re Tweedale*, [1892] 2 Q. B. 216; *Van Casteel* v. *Booker*, 2 Ex. 691. Under such a doctrine, the principal case may be supported, since no actual desire to prefer was found. In this country, however, a more satisfactory doctrine prevails, and the opposite result would certainly be reached under the National Bankruptcy Act of 1898, § 60 *b*, especially as amended by the Act of 1910, which avoids a transfer if the person receiving it has reasonable cause to believe that it would effect a preference. Here the debtor's motive is immaterial. *In re Herman*, 207 Fed. 594. Motive, as distinguished from intent, would be equally unimportant in finding the "intent to prefer" necessary to make a preference an act of bankrupcty. BANKRUPTCY ACT OF 1898, § 3 *a* (2). *In re McGee*, 105 Fed. 895. The fact that the original check in the principal case was received without knowledge of any insolvency is immaterial. For the payment of the check and not the giving of it constitutes the preference. *In re Lyon*, 121 Fed. 723.

BANKRUPTCY — PREFERENCES — NECESSITY OF INTENT TO PREFER UNDER NATIONAL BANKRUPTCY ACT: EFFECT OF AMENDMENT OF 1910. — A company transferred certain assets to the defendant, a creditor, within four months prior to the institution of bankruptcy proceedings. Its trustee in bankruptcy now sues to set aside this transfer. The lower court omitted to charge that the transfer would be voidable if the defendant had reasonable cause to believe that it would effect a preference. *Held*, that such omission is error. *Soule* v. *First National Bank of Ashton*, 140 Pac. 1098, 32 Am. B. R. 536 (Ida.).

Before the 1910 amendment the federal bankruptcy law provided that to render a preference voidable, the person receiving it must "have had reasonable cause to believe that it was intended thereby to give a preference." BANKRUPTCY ACT of 1898, § 60 *b*; 1903, § 13 *b*. This language was construed by the courts to imply that the debtor must intend a preference. *Kimmerle* v. *Farr*, 189 Fed. 295; *Hardy* v. *Gray*, 144 Fed. 922. *Contra*, *Benedict* v. *Deshel*, 177 N. Y. 1, 68 N. E. 999. But the cases did not determine definitely whether this intent could be inferred from the natural and probable results of the debtor's act. *Hardy* v. *Gray*, *supra*. *Cf. Alexander* v. *Redmond*, 180 Fed. 92. Section 11 of the 1910 amendment to the Bankruptcy Act under which the principal case was decided, provides that a preference shall be voidable when the person receiving it shall have reasonable cause to believe that the enforcement of the transfer "would effect a preference." Under the present law, therefore, the intent of the debtor and the creditor's belief as to his intent are immaterial in determining whether a preference is voidable. It is to be noted, however, that to render the transfer an act of bankruptcy the debtor must still intend a preference. BANKRUPTCY ACT OF 1898, § 3 *a* (2).

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHTS OF ACTION ARISING UPON CONTRACT: EFFECT OF AMENDMENT OF 1910. — A materialman filed notice of his lien, within the period prescribed by the lien law, but two days after the adjudication in bankruptcy of the contractor, to whom money was owing under his contract to pave the city streets. The 1910 amendment to § 47 *a* of the Bankruptcy Act of 1898 gives the trustee the rights of a lien creditor on property in the custody of the court, but as to property not in the custody of the court the rights of a judgment creditor holding an execution returned unsatisfied. *Held*, that the materialman prevails, on the ground that the property is not in the custody of the court. *Hildreth Granite Co.* v. *City of Watervliet*, 161 App. Div. (N. Y.) 420.

It seems a serious error to apply the amended § 47 *a* of the Bankruptcy Act to a case like the present. That amendment was primarily intended to prefer the trustee to claimants under unrecorded conditional sales and abolish the rule of *York Mfg. Co.* v. *Cassell*, 201 U. S. 344. See 24 HARV. L. REV.